



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,050	11/14/2003	Richard Parker Evans	040133-000100US	3217
20350 7590 07/31/2007 TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			EXAMINER PRONE, CHRISTOPHER D	
			ART UNIT 3738	PAPER NUMBER
			MAIL DATE 07/31/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

ED

Office Action Summary	Application No. 10/714,050	Applicant(s) EVANS, RICHARD PARKER	
	Examiner Christopher D. Prone	Art Unit 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 13-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 13-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/12/07 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 10, 13-18, and 20 are rejected under 35 U.S.C. 103 as being unpatentable over USPN 5,123,927 Duncan in view of USPN 4,209,861 Walker et al.

Duncan discloses the invention substantially as claimed being a method for treating an infected area of a knee of a joint comprising the steps of: getting access to the implant area, inserting a tibia component using an antibiotic-impregnated material, forming a femoral component with a smooth articulating surface made of a antibiotic-impregnated material, wherein the femoral

Art Unit: 3738

component is formed by mixing a bone cement powder with a powdered antibiotic pressed into a femoral shaped mold and then trimming excess material from the mold, attaching the femoral component, and interfacing the tibial component with the femoral component thereby maintaining the knee joint space (outlined in figure 1 of Duncan).

However, Duncan does not disclose that the tibial component comprises an elongated stem, a posterior stabilization post, or that it is constructed of polyethylene.

Walker teaches the use of a knee implant comprising a femoral component (10) with a central recess (34) and a smooth surface 16, a polyethylene (4:35-40) tibial component (11) having a central stem (23) extending into the tibia and a posterior stabilizing portion (19) in the same field of endeavor for the purpose of providing the implant with increased gripping retention and stability.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine methods of manufacturing and implanting taught by Duncan with the polyethylene tibial and femoral structures components taught by Walker in order to provide the implant with increased gripping retention and stability.

Claims 8, 9, and 19 are rejected under 35 U.S.C. 103 as being unpatentable over the combination of Duncan and Walker disclosed above and further in view of USPN 5,980,573 Shaffner.

Art Unit: 3738

The combination discloses the invention substantially as claimed being a method for treating an infected knee joint. However, The combination does not disclose re-accessing the implant area after treating the infection, removing the tibial and femoral components, and then implanting a permanent prosthesis.

Shaffner teaches a method for fighting infection and maintaining spacing in a prosthesis implant area comprising inserting a temporary antibiotic impregnated prosthesis for an extended period of time, removing the temporary prosthesis, and inserting a permanent prosthesis in the same field of endeavor for the purpose of providing a temporary implant that prevents/eliminates infection at the implant site that will maintain the function and spacing of the joint allowing the user to receive a permanent implant in the future.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the method of replacing the antibiotic implant with a permanent implant as taught by Shaffner with the device of The combination in order to provide a infection free implant site and a second permanent implant.

Response to Arguments

Applicant's arguments filed 6/12/07 have been fully considered but they are not persuasive. The applicant argues that Walker fails to disclose a smooth surface that does not include protrusions. However the inner surface of the femoral component comprises a plurality of surfaces, many of which do not

Art Unit: 3738

include protrusions. For example the inside surfaces of both the front 12 and back 18 of the femoral implant have smooth surfaces.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher D. Prone whose telephone number is (571) 272-6085. The examiner can normally be reached on Monday Through Fri 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Application/Control Number: 10/714,050
Art Unit: 3738

Page 6

Christopher D Prone
Examiner
Art Unit 3738

A
CDP


CORRINE McDERMOTT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700